IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 4570 of 2006

DATE OF DECISION : 28-8-2006

Executive Engineer,Public Health,
Division No.1,Model Town,Hisar. … Petitioner

versus

Mahabir and another … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Ajay Chaudhary, DAG Haryana
for the petitioner

Mr. S.S.Malik, Advocate,
for respondent No.1

…

ARVIND KUMAR, J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 29.8.2005, Annexure P-1, allowing the claim statement of respondent No.1-workman.

Respondent No.1-workman was appointed as daily paid Mason in January,1995 and worked as such till 3.3.1997 when his services were terminated by the petitioner-department. Respondent No.1-workman served demand notice upon the department whereafter reference was made to the Labour Court for adjudication. Respondent-workman filed his claim statement averring therein that he had put in more than 240 days of service in each calendar year and that the department illegally terminated his services in violation of Section 25-F of the Industrial Disputes Act,1947 (in short, the Act). He further averred that neither he was given one month's notice nor paid the retrenchment compensation. Upon notice of the claim

statement, the department filed its reply thereby denying the averments made in the claim statement. It was stated that the termination of the workman was in accordance with the statutory provisions. It was further alleged that the workman was offered retrenchment compensation of Rs.4576/- including wages payable in February 1997 but the workman refused to accept it and that thereafter the same was sent to him vide bank draft through registered post which too was refused by him. Replication was then filed by the workman controverting the submissions made in the written statement and reiterating the one in the claim statement.

The learned Labour Court on appreciation of evidence adduced on record by the parties, observed that even the retrenchment compensation, as allegedly offered by the department, is short by Rs.352/- as the amount required to be paid was Rs.2640/- and not Rs.2288/-. Bank draft dated 26.3.1997 was subsequent to the date of termination. Accordingly, the learned Labour Court decided the reference in favour of respondent-workman and against the petitioner-department. Hence, the present writ petition by the management.

Upon notice of the writ petition, written statement has been filed by respondent No.1 resisting the pleas raised in the writ petition.

We have heard the learned counsel for the parties and perused the paper-book.

Admittedly, the services of respondent-workman were terminated with effect from 3.3.1997. There is no denying the fact that he had completed 240 days preceding 12 months from the date of termination. Termination of services was, therefore, retrenchment under Section 2(oo) of the Act and it could only be done in accordance with the provisions of Section 25-F of the Act. The plea raised by the petitioner-department was that the requisite compensation in the shape of bank draft was sent to the respondent-workman but he refused to accept it. This argument did not find favour with the learned Labour Court as no evidence had been led to substantiate the same. Clause (b) of Section 25-F of the Act expressly provides for payment of retrenchment compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. In other words a tender of compensation under Section 25-F of the Act, in order to be valid, should be of precise amount and should

be made simultaneously with termination of the service. This is a condition precedent to a valid order of retrenchment. However, in the instant case, the services of workman were terminated on 3.3.1997. A perusal of award shows that bank draft was of dated 26.3.1997. Obviously, it was not of the date when the services of the respondent-workman were terminated i.e. 3.3.1997. Payment of tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment.

In Sain Steel Products vs. Naipal Singh and others, AIR 2001 SC 2401, the services of the workman were terminated on 8.5.1975 and the workman vide letter of even date was asked to collect whatever is the due to him, but did not spell out whether it included the amount as contemplated under Section 25-F of the Act or not? In those circumstances, it was held that they cannot take this sentence to be making an offer in terms of Section 25-F of the Act to comply with the terms thereof and upheld the view taken by the Labour Court and by the High Court.

In The Shahabad Farmers Coop. Marketing-cum-Processing Society Ltd. vs. Atam Parkash and another,2000 (4) RSJ 590, retrenchment notice was issued on 15.7.1992, however, cheque for compensation was of the following date i.e. 16.7.1992. The petition of the management was dismissed upholding the award of the Labour Court setting aside the termination of workman on that score.

No other point has been urged.

In view of the above discussion, we find no merit in the writ petition which is hereby dismissed.

(ARVIND KUMAR)
JUDGE

August 28,2006
JS

(J.S. NARANG)
JUDGE